

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

| | | |
|-----------------------------------|---|-----------|
| GRACE RONDINONE, |) | |
| |) | |
| Plaintiff, |) | COMPLAINT |
| |) | |
| v. |) | No. |
| |) | |
| DISCOVER FINANCIAL SERVICES, INC. |) | |
| |) | |
| Defendant. |) | |

PLAINTIFF'S COMPLAINT

GRACE RONDINONE (Plaintiff), through his attorney, LAW OFFICE OF
MICHAEL SIDDONS, alleges the following against DISCOVER FINANCIAL
SERVICES, INC. (Defendant):

INTRODUCTION

1. Plaintiff brings this action on behalf of himself individually seeking damages and any other available legal or equitable remedies resulting from the illegal actions of Defendant, in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff's cellular telephone in violation of the Telephone Consumer Protection Act (hereinafter "TCPA"), 47 U.S.C. § 227 *et seq.*

JURISDICTION AND VENUE

2. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 47 U.S.C. §227(b)(3). See, *Mims v. Arrow Financial Services, LLC*, 132 S.Ct. 740 (2012), holding that federal and state courts have concurrent jurisdiction over private suits arising under the TCPA.
3. Venue is proper in the United States District Court for the District Court of New Jersey pursuant to 28 U.S.C § 1391(b) because Plaintiff resides within this District and a

substantial part of the events or omissions giving rise to the herein claims occurred, or a substantial part of property that is the subject of the action is situated within this District.

PARTIES

4. Plaintiff is a natural person residing in Union County, in the city of Clark, New Jersey.
5. Defendant is a corporation doing business in the State of New Jersey, and is an Illinois corporation with its principal place of business located in Riverwoods, Illinois.
6. At all times relevant to this Complaint, Defendant has acted through its agents employees, officers, members, directors, heir, successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers.

FACTUAL ALLEGATIONS

7. Defendant is a “person” as defined by 47 U.S.C. § 153 (10).
8. Defendant placed collection calls to Plaintiff seeking and attempting to collect on alleged debts incurred through purchases made on credit issued by Defendant.
9. Defendant placed collection calls to Plaintiff’s cellular telephone at phone number (908) 406-39XX.
10. Defendant places collection calls to Plaintiff from phone numbers including, but not limited to, (801) 901-2946.
11. Per its prior business practices, Defendant’s calls were placed with an automated dialing system (“auto-dialer”).
12. Defendant used an “automatic telephone dialing system”, as defined by 47 U.S.C. § 227(a) (1) to place its telephone calls to Plaintiff seeking to collect a consumer debt allegedly owed by Plaintiff, John Bankert.

13. Defendant's calls constituted calls that were not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A).
14. Defendant's calls were placed to a telephone number assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. § 227(b)(1).
15. Defendant never received Plaintiff "prior express consent" to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on his cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).
16. On January 13, 2016, Plaintiff spoke with Defendant's representative at phone number (801) 901-2946. Plaintiff spoke to Defendant's representative and requested that Defendant cease calling Plaintiff's cellular phone.
17. Plaintiff revoked any consent, explicit, implied, or otherwise, to call his cellular telephone and/or to receive Defendant's calls using an automatic telephone dialing system in his conversation with Defendant's representative on November 20, 2015.
18. Despite Plaintiff's request to cease, Defendant continued to place collection calls to Plaintiff through March, 2016.
19. Despite Plaintiff's request that Defendant cease placing automated collection calls, Defendant placed at least one hundred and twenty-seven (127) automated calls to Plaintiff's cell phone.

FIRST CAUSE OF ACTION
NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT
47 U.S.C. § 227

20. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-20.

21. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

22. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq., Plaintiff is entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B).

23. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION
KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER
PROTECTION ACT
47 U.S.C. § 227 et. seq.

24. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-24.

25. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

26. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq., Plaintiff is entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

27. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in the future.

JURY TRIAL DEMAND

28. Plaintiff demands a jury trial on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully request that this Court enter judgment against the Defendant, and on behalf of the Plaintiff, for the following:

- a. That an order be entered declaring the Defendant's actions, as described above, in violation of the TCPA;
- b. That judgment be entered in favor of Plaintiff against Defendant for each and every violation of 47 U.S.C. § 227(b)(1)(A)(iii) pursuant to 47 U.S.C. § 227(b)(3)(B);
- c. That the Court award treble damages to Plaintiff for each and every violation of the TCPA the Court deems willful and knowing; and
- d. That the Court grant such other and further relief as may be just and proper.

Dated: March 4, 2016

RESPECTFULLY SUBMITTED,

LAW OFFICES OF MICHAEL SIDDONS

By: /s/ Michael Siddons.

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